

PATENT

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Group Art Unit: 1642

Examiner: Brenda G. Brumback

In re application of:  
Martha A. Wild *et al.*

Serial No.: 09/994,064

Filing Date: November 6, 2001

Attorney Docket No.: SY 01106 KQB US

Title:  
RECOMBINANT INFECTIOUS  
LARYNGOTRACHEITIS VIRUS  
AND USES THEREOF

REQUEST FOR CORRECTED FILING RECEIPT

Kenilworth, NJ 07033  
September 24, 2002

Assistant Commissioner for Patents  
Washington, DC 20231

Sir:

Applicants request a corrected Filing Receipt for the above-captioned application.

The current Filing Receipt, having a mailing date of January 31, 2002, indicates that no drawings were submitted with the application as originally filed.

Applicants filed the above-captioned application on November 6, 2001. The application, as filed, included: a Utility Patent Application Transmittal form (PTO/SB/05); a Fee Transmittal for FY 2002 form (PTO/SB/17); a Preliminary Amendment; a Request for Transfer of Computer Readable Form of Sequence Listing; a copy of an executed Declaration and Power of Attorney from the grandparent application (U.S. Application Serial No. 08/410,121); a copy of the grandparent patent application,

including 172 pages of Specification, 6 pages of Claims, and a 1 page Abstract; a U.S. Application Data Sheet; and a return receipt postcard. However, applicants inadvertently omitted 35 pages of drawings from the application, as filed.

Applicants then filed a Communication Regarding Submission of Drawings on March 25, 2002, which included the inadvertently omitted 35 pages of drawings.

Despite the omission of the 35 pages of drawings in the as filed application, applicants believe the later filed drawings are a part of the original disclosure. Specifically, section 18 of applicants' Utility Patent Application Transmittal form (copy enclosed) states that the above-captioned application is a divisional of United States Patent Application Serial No. 08/468,190. In addition, this same section recites:

For CONTINUATION OR DIVISIONAL APPS only: The entire disclosure of the prior application, from which an oath or declaration is supplied under Box 5b, is considered a part of the disclosure of the accompanying continuation or divisional application and is hereby incorporated by reference. The incorporation can only be relied upon when a portion has been inadvertently omitted from the submitted application parts.

Accordingly, applicants believe that the above-captioned application incorporates by reference the parent application, U.S. Patent Application Serial No. 08/468,190. The parent application included 35 pages of drawings, as evidenced from the Filing Receipt in the parent application (copy enclosed). As a result, applicants further believe that the 35 pages of inadvertently omitted drawings are entitled to the November 6, 2001 filing date.

Applicants also cite M.P.E.P. § 201.06(c), Incorporation by Reference, in support of their position, which states:

As a safeguard, however, an applicant may incorporate by reference the prior application by including, in the continuation or divisional application-as-filed, a statement that such specifically enumerated prior application or applications are "hereby incorporated herein by reference."

The statement may appear in the specification or in the application transmittal letter. The incorporation by reference statement can only be relied upon to permit the entering of a portion of the prior application into the continuation or divisional application when the portion of the prior application has been inadvertently omitted from the submitted application papers in the continuation or divisional application.

Accordingly, applicants request that a corrected Filing Receipt be issued in the above-captioned application indicating 35 pages of drawings.

If the Patent and Trademark Office has any questions regarding the above matter, the Office may contact the undersigned at the number set forth below.

Respectfully submitted,

*Michael Biro*

Michael G. Biro  
Reg. No. 46,556

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Patent Department  
Mail Stop K-6-1, 1990  
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PTO/SB/05 (03-01)

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Approved for use through 10/31/2002. OMB 0651-0032

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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**UTILITY  
PATENT APPLICATION  
TRANSMITTAL**

(Only for new nonprovisional applications under 37 CFR 1.53(b))

Attorney Docket No.

SY01106KQB

First Inventor

Wild et al.

Title

RECOMBINANT LARYNGOTRACHEITIS VIRUS AND USES THEREOF

Express Mail Label No.

EL 403236001US

**APPLICATION ELEMENTS**

See MPEP chapter 600 concerning utility patent application contents.

1. ☒ Fee Transmittal Form (e.g., PTO/SB/17)  
(Submit an original and a duplicate for fee processing)
2. ☐ Applicant claims small entity status.  
See 37 CFR 1.27.
3. ☒ Specification [Total Pages 179]  
(preferred arrangement set forth below)
- Descriptive title of the invention
  - Cross Reference to Related Applications
  - Statement Regarding Fed sponsored R & D
  - Reference to sequence listing, a table, or a computer program listing appendix
  - Background of the Invention
  - Brief Summary of the Invention
  - Brief Description of the Drawings (if filed)
  - Detailed Description
  - Claim(s)
  - Abstract of the Disclosure
4. ☐ Drawing(s) (35 U.S.C. 113) [Total Sheets       ]
5. Oath or Declaration [Total Pages 3]
- a. ☐ Newly executed (original or copy)
- b. ☒ Copy from a prior application (37 CFR 1.63 (d))  
(for continuation/divisional with Box 18 completed)
- i. ☐ **DELETION OF INVENTOR(S)**  
Signed statement attached deleting inventor(s)  
named in the prior application, see 37 CFR  
1.63(d)(2) and 1.33(b).
6. ☐ Application Data Sheet. See 37 CFR 1.76

**ADDRESS TO:**Assistant Commissioner for Patents  
Box Patent Application  
Washington, DC 20231

7. ☐ CD-ROM or CD-R in duplicate, large table or  
Computer Program (Appendix)
8. Nucleotide and/or Amino Acid Sequence Submission  
(if applicable, all necessary)
- a. ☐ Computer Readable Form (CRF)
- b. Specification Sequence Listing on:
- i. ☐ CD-ROM or CD-R (2 copies); or
- ii. ☐ paper
- c. ☐ Statements verifying identity of above copies

**ACCOMPANYING APPLICATION PARTS**

9. ☐ Assignment Papers (cover sheet & document(s))
10. ☐ 37 CFR 3.73(b) Statement ☐ Power of  
(when there is an assignee) Attorney
11. ☐ English Translation Document (if applicable)
12. ☐ Information Disclosure ☐ Copies of IDS  
Statement (IDS)/PTO-1449 Citations
13. ☒ Preliminary Amendment
14. ☒ Return Receipt Postcard (MPEP 503)  
(Should be specifically itemized)
15. ☐ Certified Copy of Priority Document(s)  
(if foreign priority is claimed)
16. ☐ Nonpublication Request under 35 U.S.C. 122  
(b)(2)(B)(i). Applicant must attach form PTO/SB/35  
or its equivalent.
17. ☒ Other: Request for Transfer...-1 pg.

18. If a CONTINUING APPLICATION, check appropriate box, and supply the requisite information below and in a preliminary amendment, or in an Application Data Sheet under 37 CFR 1.76:

☐ Continuation ☒ Divisional ☐ Continuation-in-part (CIP)of prior application No.: 08, 468,190

Prior application information:

Examiner

Brumback, B.Group Art Unit: 1642

For CONTINUATION OR DIVISIONAL APPS only: The entire disclosure of the prior application, from which an oath or declaration is supplied under Box 5b, is considered a part of the disclosure of the accompanying continuation or divisional application and is hereby incorporated by reference. The incorporation can only be relied upon when a portion has been inadvertently omitted from the submitted application parts.

**19. CORRESPONDENCE ADDRESS**

Customer Number or Bar Code Label

24265or ☐

Correspondence address below

Name	Pamela G. Salkeld (Reg. No. 38607)				
Address					
City		State		Zip Code	
Country		Telephone	908-298-2135	Fax	908-298-5388

Name (Print/Type)

Pamela G. Salkeld

Registration No. (Attorney/Agent)

38607

Signature

Pamela G. Salkeld

Date

November 6, 2001

Burden Hour Statement: This form is estimated to take 0.2 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Box Patent Application, Washington, DC 20231.

FILING RECEIPT



UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office  
ASSISTANT SECRETARY AND COMMISSIONER  
OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

APPLICATION NUMBER	FILING DATE	GRP ART UNIT	FIL FEE REC'D	ATTORNEY DOCKET NO.	DRWGS	TOT CL	IND CL
08/468,190	06/06/95	1802	\$519.00	39116-B/JPW/	35	1	1

JOHN P WHITE  
COOPER AND DUNHAM  
1185 AVENUE OF THE AMERICAS  
NEW YORK NY 10036

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Receipt is acknowledged of this nonprovisional Patent Application. It will be considered in its order and you will be notified as to the results of the examination. Be sure to provide the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION when inquiring about this application. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. If an error is noted on this Filing Receipt, please write to the Application Processing Division's Customer Correction Branch within 10 days of receipt. Please provide a copy of the Filing Receipt with the changes noted thereon.

Applicant(s)

MARTHA A. WILD, SAN DIEGO, CA; MARK D. COCHRAN,  
CARLSBAD, CA.

CONTINUING DATA AS CLAIMED BY APPLICANT-

THIS APPLN IS A CON OF 08/410,121 03/23/95  
WHICH IS A CIP OF 08/126,597 09/24/93

FOREIGN FILING LICENSE GRANTED 07/26/95  
TITLE

\* SMALL ENTITY \*

RECOMBINANT INFECTIOUS LARYNGOTRACHEITIS VIRUS AND USES THEREOF

PRELIMINARY CLASS: 435

JAN 24 1996

TO PPIE  
SEP 3 8 2002  
P&T TRADEMARK OFFICE

Receipt

Please type a plus sign (+) inside this box → ☐

PTO/SB/21 (6-98)  
Approved for use through 09/30/2000. OMB 0651-0031  
Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

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<b>TRANSMITTAL FORM</b>  (to be used for all correspondence after initial filing)	Application Number	09/994,064	
	Filing Date	November 6, 2001	
	First Named Inventor	Wild et al.	
	Group Art Unit	1642	
	Examiner Name	Brumback, Brenda G.	
Total Number of Pages in This Submission	10	Attorney Docket Number	SY01106KQB

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OCT 1 8 2002

ENCLOSURES (check all that apply)		
<input type="checkbox"/> Fee Transmittal Form	<input type="checkbox"/> Assignment Papers (for an Application)	<input type="checkbox"/> After Allowance Communication to Group
<input type="checkbox"/> Fee Attached	<input type="checkbox"/> Drawing(s)	<input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences
<input checked="" type="checkbox"/> Amendment / Response	<input type="checkbox"/> Licensing-related Papers	<input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief)
<input type="checkbox"/> After Final	<input type="checkbox"/> Petition Routing Slip (PTO/SB/69) and Accompanying Petition	<input type="checkbox"/> Proprietary Information
<input type="checkbox"/> Affidavits/declaration(s)	<input type="checkbox"/> Petition to Convert to a Provisional Application	<input type="checkbox"/> Status Letter
<input type="checkbox"/> Extension of Time Request	<input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address	<input checked="" type="checkbox"/> Additional Enclosure(s) (please identify below)
<input type="checkbox"/> Express Abandonment Request	<input type="checkbox"/> Terminal Disclaimer	Request Filing Receipt 3 pgs
<input type="checkbox"/> Information Disclosure Statement	<input type="checkbox"/> Small Entity Statement	Patent Applic. Transmittal -copy-1 page
<input type="checkbox"/> Certified Copy of Priority Document(s)	<input type="checkbox"/> Request for Refund	Filing Receipt copy 1 pg.
<input type="checkbox"/> Response to Missing Parts/Incomplete Application		Sequence Listing Stmt 1 pg.
<input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53		Cert of Mailing; 1pg; Return Card
Remarks		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT	
Firm or Individual name	Michael G. Biro, Reg. No. 46,556
Signature	<i>Michael Biro</i>
Date	September 24, 2002

CERTIFICATE OF MAILING			
I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231 on this date: <input type="text"/>			
Typed or printed name		<input type="text"/>	
Signature	<input type="text"/>	Date	<input type="text"/>

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Application No.: 09/994,064

Applicants' Reference: SY 01106 KQB US


Filing Date: November 6, 2001

Title of Invention: RECOMBINANT INFECTIOUS  
LARYNGOTRACHEITIS VIRUS  
AND USES THEREOF

Applicants: Martha A. Wild  
Mark D. Cocharn

Sequence Listing Statement

On November 6, 2001, applicants filed the above titled non-provisional application, submitting a Preliminary Amendment and a Request for Transfer of Computer Readable Form of Sequence Listing from the parent case, Serial No. 08/468,190 filed on June 6, 1995. I hereby declare that the information recorded on the diskette in the parent case is identical in content to the information in the written Sequence Listing of the parent and instant cases. The sequence listings do not go beyond the disclosure in the application as filed, and thus do not constitute new matter.

  
\_\_\_\_\_  
Michael G. Biro, Reg. No. 46,556  
Patent Attorney

Date: September 24, 2002